Supreme Court, U.S.
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No. 02-27

In The

Supreme Court of the United States

ALLINA HEALTH SYSTEM CORP., ET AL.,

Petitioners,

v.

UNITED STATES OF AMERICA, EX REL. MINNESOTA ASSOCIATION OF NURSE ANESTHETISTS,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

SUPPLEMENTAL BRIEF FOR THE PETITIONERS

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INTRODUCTION

While briefing of the petition for a writ of certiorari was under way in this action, the Court granted certiorari in case number 01-1572, *Cook County v. United States ex rel. Chandler*. Although the outcome in *Cook County* will not be directly dispositive of this action, the grant of certiorari in that case emphasizes the significance of the threshold jurisdictional determination of who can be a party to a civil qui tam action under the False Claims Act, 31 U.S.C. §§ 3729-3733 ("FCA" or "Act"). Pursuant to Supreme Court Rule 15.8, petitioners file this supplemental brief in support of their petition, respectfully suggesting that certiorari should be granted here to address a companion jurisdictional issue to that presented in *Cook County*. Petitioners also suggest that this action would be an appropriate one to consider joining with *Cook County* for oral argument.[1]

ARGUMENT

The question presented in *Cook County* is whether local governmental entities, in the form of a public hospital, are subject to qui tam actions under the FCA, 31

[1] Petitioners Allina Health System, et al., filed their petition for a writ of certiorari on June 24, 2002. The Court granted the petition of Cook County in case no. 01-1572 on June 28, 2002. Petitioners were not aware of the grant of certiorari in case no. 01-1572 until after they filed the reply brief in support of their petition on August 19, 2002. Opening briefs in *Cook County* are scheduled to be filed on September 9, 2002, while this case is calendared for conference on September 30, 2002, making a joint briefing schedule for the two cases not feasible.

U.S.C. § 3729. The answer to this question turns on whether local governmental entities fall within the definition of "any person," 31 U.S.C. § 3729(a), subject to liability for knowingly presenting or causing to be presented a false claim to the government. *See* Petition for a Writ of Certiorari of Cook County (Feb. 19, 2002) ("Cook County Pet.") 6-8; 12.

A dispositive question of federal jurisdiction based on statutory interpretation also exists in this case, namely whether an incorporated trade association, respondent Minnesota Association of Nurse Anesthetists ("MANA"), can be an "original source" under the Act, 31 U.S.C. § 3730(e)(4)(B), entitled to bring a qui tam action that is based upon publicly disclosed allegations of false claims. Petition for a Writ of Certiorari of Allina Health System, et al. (June 24, 2002) ("Pet.") 7-16. Answering that question turns in large part on determining whether MANA is "an individual" under the FCA's definition of original source, 31 U.S.C. § 3730(e)(4)(B), which ultimately involves interpreting the same sources of law needed to answer the question presented in *Cook County*.[2]

The statutory term "person" is used in both 31 U.S.C. § 3729 and § 3730, but is specifically defined in neither section. Both Cook County and the petitioners here rely on the analysis of the Court in *Vermont Agency of Natural*

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[2] Factually, *Cook County* and this case both involve an industry, the provision of health care, which has become a recognized locus of FCA qui tam actions. *See* Pet. 6-7. Both cases attracted substantial *amicus* support at the petition stage from hospitals around the nation, attesting to the significance of the lower court decisions at issue to public and private hospitals.

Resources v. United States ex rel. Stevens, 529 U.S. 765 (2000), as a guide to statutory interpretation of the jurisdictional provisions of the FCA. *Stevens*, in turn, looked to the FCA's "sister scheme," the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. §§ 3801-3812 ("PFCRA"), for a definition of "person" suitable for use in interpreting that term in the FCA, 31 U.S.C. § 3729. *See* 529 U.S. at 786 and 31 U.S.C. § 3801(a)(6) (PFCRA definition of "person" as "any individual, partnership, corporation, association or private organization"). Cook County argues that local governmental entities do not fall within the scope of this definition of "person," Cook County Pet. 21-23, while the petitioners here argue that, under this definition of "person," the incorporated trade association MANA cannot be considered "an individual" able to proceed as an original source relator.[3] Pet. 9-13.

Hearing this case and *Cook County* jointly would provide the Court an opportunity to address definitively questions left open after *Stevens* of who can bring qui tam actions under the False Claims Act and who can be targeted by them.

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[3] Even the dissent in *Stevens* acknowledges the distinction between "private individuals and corporations" in "general statutory references to 'persons,'" 529 U.S. at 780 fn.9 (majority op., quoting 529 U.S. at 790, J. Stevens, dissenting).

CONCLUSION

Petitioners respectfully request that the petition for a writ of certiorari be granted and that the Court consider hearing argument in this action jointly with *Cook County*.

Dated: September 9, 2002

Respectfully submitted,

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